

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Lafayette Division**

IN RE:

PROGRESSIVE ACUTE CARE, LLC, ET AL.

CASE NO. 16-50470

CHAPTER 11

DEBTORS

JOINTLY ADMINISTERED

**MOTION FOR ADMINISTRATIVE ORDER
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS**

NOW INTO COURT, through undersigned counsel, come Progressive Acute Care, LLC, Progressive Acute Care Avoyelles, LLC, Progressive Acute Care Oakdale, LLC and Progressive Acute Care Winn, LLC, as debtors and debtors-in-possession (collectively, the "Debtors"), who submit this Motion for an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals (the "Motion"). In support thereof, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

BACKGROUND

2.

On May 31, 2016 (“Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§1107 and 1108. No trustee or examiner has been appointed, and no unsecured creditors’ committee has been established.

3.

The statutory predicate for the relief requested herein is contained in Bankruptcy Code §§105(a), 363(c), 1107(a), and 1108.

RELIEF REQUESTED

4.

The Debtors request that this Court enter an order establishing certain interim compensation and expense reimbursement procedures for the professionals retained by the Debtors and any official committee and its members, if appointed (collectively, "Professionals").

5.

On May 31, 2016, the Debtors filed an application to retain Steffes, Vingiello, McKenzie, LLC (“SVM”), as bankruptcy counsel. On the same date, Debtors filed an application to retain SOLIC Capital Advisors, LLC and SOLIC Capital, LLC (collectively, “SOLIC”) as financial advisors and to provide transactional support to the Debtors. The applications to employ SVM as bankruptcy counsel and SOLIC as financial advisors¹ to provide restructuring services were granted on an interim basis, with a final hearing scheduled for June 28, 2016.

¹ The application to employ SOLIC to provide transactional support to the Debtors has not yet been ruled upon; and, hearing thereon is currently scheduled for June 28, 2016.

6.

The Debtors request that procedures for compensating and reimbursing Court-approved Professionals on a monthly basis be established herein. Such an order will permit the Court and all other parties to more effectively monitor the professional fees incurred in this matter.

7.

The requested procedures would require Professionals seeking interim compensation from the estate to serve detailed invoices reflecting the services rendered and expenses incurred by each Professional for the prior month, which invoices would be served upon the (a) the Debtors, through their counsel of record, (b) the Office of the United States Trustee; (c) Business First Bank; and, (d) any Unsecured Creditors' Committee, through its counsel of record (collectively, the "Service Parties"). If there is no timely objection, the Professionals would be permitted to be paid eighty percent (80%) of the amount of fees incurred for the month, and one hundred percent (100%) of disbursements for the month. These payments would be subject to the Court's subsequent approval as part of the normal interim fee application process approximately every one hundred and twenty (120) days at which time the Professionals may seek payment of the remaining twenty percent (20%) of the fee ("the Holdback")

8.

Specifically, the Debtors propose that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows:

- (a) On or before the fifteenth (15th) day of each month following the month for which compensation is sought, the Professionals may submit a set of invoices (each a "Fee Summary") to the Service Parties. Each such entity receiving a Fee Summary will have ten (10) days from the date of mailing thereof to review the Fee Summary. At the expiration

of the ten (10) day period, if no objection (as described below) is made to the Fee Summary, each Professional who submitted a Fee Summary will notify the Debtors, in writing, that no objections have been filed with regard to the Fee Summary. Upon receipt of such notice, the Debtors will pay eighty percent (80%) of the fees and one hundred percent (100%) of the disbursements requested in the Professionals' respective Fee Summaries. Any Professional who fails to file a Fee Summary for a particular month or months may submit a consolidated Fee Summary that includes a request for compensation earned or expenses incurred during previous months. All Fee Summaries shall include the relevant time entry and description and expense detail.

(b) In the event any of the Service Parties has an objection to the compensation or reimbursement sought in a particular Fee Summary, it will, within ten (10) days of the receipt of the Fee Summary, serve upon (i) the Professional whose Fee Summary is objected to, and (ii) except to the extent duplicative of the foregoing clause (i), the other Service Parties, a written "Notice of Objection to Fee Summary," setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting Service Party or Service Parties and the Professional whose Fee Summary is objected to will attempt to reach an agreement regarding the correct payment to be made. If the parties are unable to reach an agreement on the objection(s) within fifteen (15) days after receipt of such Notice of Objection to Fee Summary, the Professional whose Fee Summary is objected to will have the option of (i) filing the objection(s) together with a request for payment of the disputed amount with the court, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection(s) if payment of the disputed amount is requested. The Debtors are authorized

and directed to pay promptly the balance of the undisputed fees, up to eighty percent (80%), and the balance of the undisputed expenses, up to one hundred percent (100%) that are not the subject of a Notice of Objection to Fee Summary.

(c) The first Fee Summary shall be submitted to the Service Parties no later than July 15, 2016, and will cover the period from the Debtors' Petition Date through June 30, 2016. Thereafter, the Professionals may submit Fee Summaries in the manner described above.

(d) Approximately every four (4) months, each of the Professionals shall file with the Court and serve on the Service Parties on or before the forty-fifth (45th) day following the last day of the compensation period for which compensation is sought, an application for interim court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses requested for the prior four (4) months that incorporates the unfiled monthly interim fee applications. Any Professional who fails to file an application when due shall be ineligible to receive further interim payments of fees or expenses as provided herein until such time as the application is submitted. Upon approval of such a quarterly fee application, any Professional will be paid all interim allowed withheld amounts of approved fees and expenses for the applicable period (i.e. the 20% holdback, if applicable).

(e) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular Fee Summary or quarterly fee application will not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above.

(f) Neither (i) the payment of nor the failure to pay, in whole or in part, a Fee Summary or quarterly fee application; or (ii) the filing of nor failure to file an Objection will bind

any party in interest or the Court with respect to the final allowance of applications for compensation and reimbursement of expenses of Professionals.

11.

The procedures suggested in this Motion will enable the parties to closely monitor the costs of administration and allow the Debtors to maintain a more level cash flow availability and implement efficient cash management procedures.

12.

The Debtors further request that the Court limit the notice of hearings to consider interim applications to the Service Parties and those parties who have requested notice. Such notice should reach the parties most active in this Chapter 11 Case and will save the expense of undue duplication and mailing.

13.

The Debtors request authority to pay the Professional Fees from any of the Debtors' resources. To the extent said fees must be allocated funding, the Debtors will have an administrative claim against the non-funding Debtors.

BASIS FOR RELIEF REQUESTED

14.

Section 331 of the Bankruptcy Code provides, in pertinent part, as follows:

“A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the Court not more than once every 120 days after an order for relief in a case under this title, or more often if the Court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.”

15.

Section 105(a) of the Bankruptcy Code provides, in pertinent part:

"court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

16.

Similar procedures for compensating and reimbursing court-approved professionals have been established in other chapter 11 cases in this state. *See, e.g., In re New Louisiana Holdings, LLC, et al.*, No. 14-50756 (Bank. W.D.La. February 6, 2015); *In re Piccadilly Restaurants, LLC, et al.*, No. 12-51127 (Bankr. W.D.La. Oct. 22, 2012); *In re Harvest Oil & Gas, LLC, jointly administered with Saratoga Resources, Inc., The Harvest, Group, LLC, LOBO Operating Inc., and LOBO Resources, Inc.*, Nos. 09-50397 through 09-50401 (Bank. W.D.La. April 17, 2009); *In re Zeus Investments, LLC*, No. 11-50406 (Bank. W.D.La. dated March 30, 2011); *In re Louisiana Riverboat Gaming Partnership, et al.*, Nos. 12-12013 through 12-12015, 12-12017 and 12-12019 through 12-12020 (Bank. W.D.La. September 19, 2012). Such procedures are needed to avoid having professionals fund the reorganization case. *In re Int'l Horizons, Inc.*, 10 B.R. 895, 897 (Bank. N.D. Ga. 1981) (court established procedures for monthly interim compensation). Appropriate factors to consider include "the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the debtor in providing services necessary to achieve a successful reorganization of the debtor." *Id.* at 897-98. The Debtors submit that the procedures sought herein are appropriate considering the above factors.

17.

The Debtors further maintain that the efficient administration of this Chapter 11 Case will be significantly aided by establishing the foregoing interim compensation and expense reimbursement procedures. Accordingly, the relief requested is in the best interests of the Debtors, their estates and creditors.

NOTICES

18.

Notice of this motion has been served upon i) the Debtors, through their counsel of record, ii) the Office of the United States Trustee; iii) secured creditors of the Debtors; (iv) the 20 largest unsecured creditors of each of the Debtors; and, (v) all parties requesting notices in these matters.

WHEREFORE, the Debtors respectfully request entry of an Order, substantially in the form attached to this Motion as Exhibit A, establishing procedures for interim compensation of Professionals and reimbursement of expenses of Professionals. The Debtors further pray for such other general and equitable relief as is just and proper.

Respectfully submitted,

/s/ Barbara B. Parsons

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EXHIBIT "A"

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Lafayette Division**

IN RE:

PROGRESSIVE ACUTE CARE, LLC, ET AL.

CASE NO. 16-50470

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ORDER

CONSIDERING the *Motion for an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* (the "Motion") [P-___] filed herein by debtors and debtors-in-possession (collectively, the "Debtors"), it appearing that the relief requested therein is in the best interests of the Debtors' estates, their creditors and other parties-in-interest, and it appearing that this is a core proceeding pursuant to 28 U.S.C. §158(a); and, after due deliberation and cause appearing therefor;

IT IS ORDERED that the Motion be and is hereby GRANTED;

IT IS FURTHER ORDERED that, except as may otherwise be provided in Court orders

authorizing the retention of specific professionals, all professionals whose retention is subject to approval of the Court in these procedurally consolidated bankruptcy cases (collectively, this "Chapter 11 Case") may seek interim compensation in accordance with the following procedures:

(a) On or before the fifteenth (15th) day of each month following the month for which compensation is sought, the Professionals will submit a set of invoices (each a "Fee Summary") to the Service Parties. Each such entity receiving a Fee Summary will have ten (10) days from the date of mailing thereof to review the Fee Summary. At the expiration of the ten (10) day period, if no objection (as described below) is made to the Fee Summary, each Professional who submitted a Fee Summary will notify the Debtors, in writing, that no objections have been filed with regard to the Fee Summary. Upon receipt of such notice, the Debtors will pay eighty percent (80%) of the fees and one hundred percent (100%) of the disbursements requested in the Professionals' respective Fee Summaries.

(b) In the event any of the Service Parties has an objection to the compensation or reimbursement sought in a particular Fee Summary, it will, within ten (10) days of the receipt of the Fee Summary, serve upon (i) the Professional whose Fee Summary is objected to, and (ii) except to the extent duplicative of the foregoing clause (i), the other Service Parties, a written "Notice of Objection to Fee Summary," setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting Service Party or Service Parties and the Professional whose Fee Summary is objected to will attempt to reach an agreement regarding the correct payment to be made. If the parties are unable to reach an agreement on the objection(s) within fifteen (15) days after receipt of such Notice of Objection to Fee Summary, the Professional whose Fee Summary is objected to will have the option of (i) filing the objection(s) together with a request for payment of the disputed amount with the court, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection(s) if payment of the disputed amount is requested. The Debtors are required to pay promptly the balance of the fee, up to eighty percent (80%) and one hundred percent (100%) of the disbursements requested that are not the subject of a Notice of Objection to Fee Summary.

(c) The first Fee Summary will be submitted to the Service Parties no later than July 15, 2016, and will cover the period from the Debtors' Petition Date through the end of June 30, 2016.

(d) Approximately every four (4) months, each of the Professionals will file with the Court, and serve on the Service Parties, on or before the forty-fifth (45th) day following the last day of the compensation period for which compensation is sought, an application for interim court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses for the prior four (4) months in the

Fee Summaries. Any Professional who fails to file an application when due will be ineligible to receive further interim payments of fees and expenses as provided herein until such time as the application is submitted. Upon approval of an application for interim compensation, any Professional will be paid withheld amounts of approved fees and expenses for the applicable period.

(e) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular Fee Summary will not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above.

(f) Neither the objection to the payment of, nor the failure to object to payment of, in whole or in part, monthly interim compensation and reimbursements provided herein will bind the United States Trustee, any Professional, any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursements of Professionals.

(g) Any one of the Debtors may fund the payments to the Professionals.

IT IS FURTHER ORDERED that each member of the Official Unsecured Creditors' Committee in this Chapter 11 Case be permitted to submit statements of expenses and supporting vouchers to counsel for the committee, who will collect and submit such requests for reimbursement in accordance with the foregoing procedure for monthly and interim compensation of Professionals.

IT IS FURTHER ORDERED that the Professional Fees may be paid from any of the Debtors' resources and to the extent said fees must be allocated funding, Debtors shall have an administrative claim against the non-funding Debtors.

IT IS FURTHER ORDERED that it will be sufficient to send notice of a hearing to consider quarterly interim applications to the following: (a) the Unsecured Creditors' Committee, through its counsel of record, (b) the Debtors, through their counsel of record, and (c) the Office of the United States Trustee.

IT IS FURTHER ORDERED that this Court will retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

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Respectfully submitted by:
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